



U.S. Citizenship
and Immigration
Services

FILE:

Office: HOUSTON, TEXAS

Date:

AUG 25 2004

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

DISCUSSION: The application was denied by the District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in [REDACTED] on September 3, 1993. The applicant's mother, [REDACTED] was born in [REDACTED] and she is not a U.S. citizen. The applicant's birth certificate lists his father as [REDACTED] born in [REDACTED]. An October 10, 2003, Gynelex Corporation, Parentage/Kinship Test Result reflects, however, that there is a 99.94% probability that another man, [REDACTED] is the applicant's natural father. An August 29, 2003, affidavit written and signed by the applicant's mother also states that [REDACTED] is the applicant's natural father. The record reflects that [REDACTED] was born in [REDACTED] on March 26, 1968, and that he became a naturalized U.S. citizen on August 2, 1996. The record indicates that the applicant entered the United States without a lawful admission on an unknown date in 2003. The applicant presently seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded the applicant had failed to establish that he resided in the United States pursuant to a lawful admission for permanent residence, as required by section 320 of the Act. The district director found further that the applicant had failed to establish that he met the definition of "child" under section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), because the applicant had not been legitimated or adopted by his father. The application was denied accordingly.

On appeal, the applicant, through his father, indicates that he resides in the United States in the legal and physical custody of his U.S. citizen father. The applicant makes no assertions on appeal regarding whether or not he was admitted into the U.S. as a lawful permanent resident. Nor does the applicant address the district director's finding that he does not meet the definition of "child" as set forth in section 101(c) of the Act.

Section 101(c) of the Act states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

The AAO notes that that pursuant to article 130 of the Mexican Constitution, a child born out of wedlock in Mexico, becomes legitimated only upon the civil marriage of his or her parents. *See Matter of M-D-*, 3 I&N Dec. 485 (BIA 1949). *See also, Matter of Hernandez*, 14 I&N Dec. 608 (BIA 1974) and *Matter of Rodriguez-Cruz*, 18 I&N Dec. 72 (BIA 1981). The applicant failed to establish that his parents were at any time married. The AAO thus finds that the applicant has not been legitimated by his father pursuant to the laws in Mexico.

The AAO additionally finds that the applicant has failed to present any evidence to indicate that he has been legitimated by his father in accordance with legitimation laws in Texas.

The Texas Family Code provides that a Texas court may issue a decree of legitimation upon a father's compliance with paternity decree provisions set forth in § 13.23 of the Texas Family Code, as well as legal legitimation provisions set forth in § 13.2.1 of the Texas Family code. The applicant has failed to establish that [REDACTED] obtained a Texas court ordered decree of paternity or that [REDACTED] obtained a decree of

legitimation from a Texas court. The AAO thus finds that the applicant has not been legitimated by Mr. Vazquez pursuant to the laws in Texas. In the alternative, the applicant has also failed to establish that Mr. Vazquez has legally adopted the applicant.

The AAO notes that even if the applicant had established that he met the definition of "child" as set forth in section 101(c) of the Act, the applicant would nevertheless have failed to establish that he meets the requirements for automatic citizenship under section 320 of the Act. Section 320(a) of the Act states that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

In the present matter, the applicant has established that he is under the age of eighteen and that [REDACTED] became a naturalized U.S. citizen prior to the applicant's eighteenth birthday. The record additionally indicates that the applicant has lived in the U.S. with [REDACTED] since some time in 2003. The record contains no evidence, however, to indicate that the applicant was admitted into the U.S. pursuant to a lawful admission for permanent residence. Nor does the record reflect that the applicant obtained an adjustment of his unlawful immigration status to that of a lawful permanent resident. The applicant therefore failed to establish that he meets all of the requirements for automatic citizenship under section 320 of the Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in this case and the appeal will be dismissed.

ORDER: The appeal is dismissed